

1 BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

2 STATE OF MONTANA

3 \* \* \* \* \*

4 MARY ANN ZORN )

5 Appellant, )

6 vs. )

OSPI 188-90 (SECOND APPEAL)

7 BOARD OF TRUSTEES, TOOLE )

8 COUNTY SCHOOL DISTRICT NO. 2, )

9 Respondent. )

DECISION AND ORDER

10 \* \* \* \* \*

11 STATEMENT OF THE CASE

12 Appellant, Mary Ann Zorn was a nontenured music teacher  
13 employed by Respondent School District in Sunburst, Montana.  
14 Zorn's 1987-1988 individual teacher's contract incorporated state  
15 school law. At the time Zorn signed the contract, state law  
16 required districts to notify nontenured teachers that their  
17 contracts would not be renewed for the following year on or  
18 before April 15. The 1987 Legislature amended the statute to  
19 extend the last date for timely notice from April 15 to May 1.  
20 The Sunburst District notified Zorn on April 25 that her contract  
21 would not be renewed for the following school term. Zorn  
22 appealed the decision of the Sunburst Trustees to the County  
23 Superintendent. Zorn contended that under the terms of her  
24 contract the School District had to notify her of nonrenewal on  
25 or before April 15, and therefore, she did not receive a timely

1 notice of her nonrenewal. In addition, Zorn contended that the  
2 Board failed to follow its own policies in deciding not to renew  
3 her contract. The County Superintendent dismissed Zorn's appeal  
4 for lack of jurisdiction.

5 Zorn appealed to the State Superintendent of Public  
6 Instruction (OSPI 149-88), who remanded the case to the County  
7 Superintendent to hear and decide two issues:

8 1. Whether Zorn's contract with the District was  
9 unconstitutionally impaired when the District relied on  
10 section 20-4-206(1), as amended, and did not notify her of  
its decision not to renew her contract until after April  
15, 1988; and

11 2. Whether the District violated the terms of its  
12 contract with Zorn by not following its policies in  
reaching the April 25, 1988 decision not to renew her  
contract.

13 The parties entered into a Stipulation of Facts in lieu of a  
14 factual hearing and submitted briefs. On June 11, 1990 the Toole  
15 County Superintendent issued her Decision and Order. She held  
16 that Zorn's contract was not unconstitutionally impaired and that  
17 the Board of Trustees had followed its policies and rules of  
18 procedure in reaching its April 25, 1988 decision not to renew  
19 Zorn's contract. The County Superintendent affirmed the decision  
20 of the District.

21 Zorn appealed the June 11, 1990 decision of the County  
22 Superintendent to the State Superintendent on July 9, contending  
23 that the decision of the County Superintendent was in violation  
24 of constitutional or statutory provisions or affected by other  
25

1 error of law.

2 Having reviewed the complete record and the briefs of the  
3 parties, this State Superintendent now makes the following:

4 DECISION AND ORDER

5 The County Superintendent's decision of June 11, 1990 is not  
6 affected by error of law. Given the stipulated facts, the  
7 District's reliance on the 1987 amendment extending the time for  
8 providing timely notice from April 15 to May 1 did not  
9 unconstitutionally impair Zorn's 1987-1988 contract with the  
10 Sunburst District. The April 25 notification of nonrenewal was  
11 timely.

12 The Sunburst District Board of Trustees followed the policies  
13 and regulations it had adopted in reaching its decision not to  
14 renew Zorn's contract for the following school year.

15 The Toole County Superintendent's decision of June 11, 1990  
16 is hereby affirmed.

17 MEMORANDUM OPINION

18 Standard of Review

19 The standard of review by the State Superintendent is set  
20 forth in section 10.6.125, ARM. This rule was modeled upon  
21 section 2-4-704, MCA, and the Montana Supreme Court has  
22 interpreted the statute and the rule to mean that agency (County  
23 Superintendent) findings of fact are subject to a clearly  
24 erroneous standard of review and that conclusions of law are  
25 subject to an abuse of discretion standard of review. Harris v.

1 Bauer, 230 Mont. 207, 749 P.2d 1068, at 1071, 45 St. Rptr. 147,  
2 at 151, (1988); City of Billings v. Billings Firefighters Local  
3 No. 521, 200 Mont. 421, at 430, 651 P.2d 627, at 632 (1982).

4 On April 9, 1987 Zorn signed a teaching contract for the 1987-  
5 88 school year with Toole County School District No. 2. The  
6 written contract specifically incorporated by reference the laws  
7 of the State of Montana and the official rules and regulations of  
8 the Board of Trustees. The Contract stated:

9 IT IS AGREED AND UNDERSTOOD that the school laws and  
10 regulations of the State of Montana and the policies set  
11 forth by the Board of Trustees and the District  
Superintendent for the government of the School are hereby  
made a part of this contract.

12 At the time Zorn signed her contract, section 20-4-206, MCA,  
13 required Districts to notify nontenured teachers of nonrenewal by  
14 April 15. If the District failed to notify the teacher of  
15 nonrenewal by April 15, the teacher was automatically rehired for  
16 the next school year. In 1987, the Montana Legislature amended  
17 the section by extending the nonrenewal notice date to May 1,  
18 effective October 1, 1987.

19 The prohibition against the legislature impairing an existing  
20 contract is not absolute and is not to be "read with literal  
21 exactness like a mathematical formula; it prohibits unreasonable  
22 impairment only." The nonrenewal of a nontenured teacher's  
23 contract in Montana has been subject to legislative control since  
24 1973. Zorn knew the legislature could exercise its power to  
25 amend the statute. As quoted in the brief of Respondent:

1 . . . . [A]n analysis of the validity of a statute under  
2 the contract clause includes consideration of whether  
3 there has been an impairment of contractual obligation  
4 sufficiently severe to generate further constitutional  
5 concern and, if so, whether the impairment nevertheless is  
6 saved against constitutional infirmity because it is  
7 imposed upon reasonable conditions that adequately protect  
8 the admittedly impaired interest. . . . 16A C.J.S.,  
9 Constitutional Law, Section 277.

10 Zorn, a nontenured teacher, was entitled to timely notice of  
11 nonrenewal. The 1987 Legislature extended the time allowed for  
12 districts to give that timely notice by 15 days, from April 15  
13 to May 1. If the District failed to give timely notice to Zorn  
14 under her current contract, she would automatically get a  
15 contract for the next school year. The only contract term  
16 changed by the amendment of section 20-4-206, MCA, in the  
17 **existing contract** was the date by which timely notice had to be  
18 given. The change of the notification date was effective on  
19 October 1, 1987 -- more than five months before her right to a  
20 new contract for the following year would have vested.

21 The Board's reliance on the 1987 amendment to section 20-4-  
22 206, MCA, allowing timely notice to be given to Zorn on or before  
23 May 1, 1988, did not unconstitutionally impair her existing  
24 contract with the District.

25 The following is a chronological outline of the facts in  
regard to the motions made at the Board of Trustees' meetings on  
April 13 and April 25:

	DATE	TRUSTEE	MOTION	VOTE
1	4/13	Sveum	Not to renew Zorn	3/3 tie
2	4/13	Thompson	To renew Zorn	2/4
	4/13	Sveum	Not to renew	no vote
3	4/25	Sveum	Withdrew 4/13 motion	passed
	4/25	Sveum	To adopt special rule	passed
4	4/25	Sveum	Not to rehire	5/1

5 The policies of Elementary School District No. 2 and Sunburst  
6 High School District No. 2 contain the following provision  
7 regarding meeting conduct and the order of business:

8 All Board meetings will be conducted in an orderly and  
9 business-like manner, using Robert's Rules of Order as a  
10 guide **except when such rules are superseded by Board**  
11 **policies.** The order of business will be that indicated  
12 in the agenda. Any additions or changes in the prepared  
13 agenda may be requested by the Superintendent or a Trustee  
14 and must be approved by a majority vote of the Trustees  
15 present. The Board shall establish its regular order of  
16 business, but may elect to change the order by a majority  
17 vote of the members. The minutes shall reflect the voting  
18 record of each Trustee present. (Sunburst School Board  
19 Policy 1440 - Exhibit E.) [Emphasis added.]

20 A motion to **reconsider** is subject to time limits and under  
21 the facts of this case, would have been appropriate on April 13.  
22 Nothing in board policy supersedes the unique characteristics of  
23 a motion to reconsider. See Section 36, Robert's Rules of Order.  
24 At the April 25 meeting, John Sveum made a motion "not to rehire  
25 Zorn." Mr. Sveum's motion was a **renewal** motion and is  
appropriate under the facts of this case. See Section 37,  
Robert's Rules of Order. The special rule adopted by the Board  
on April 25 was superfluous.

The Board of Trustees followed their adopted policies in  
deciding not to renew the contract of Zorn.

1 The decision of the County Superintendent is hereby affirmed.

2 DATED this 15<sup>th</sup> day of February, 1991.

3  
4 Nancy Keenan  
5 NANCY KEENAN  
6

7 CERTIFICATE OF SERVICE

8 THIS IS TO CERTIFY that on this 15<sup>th</sup> day of February, 1991,  
9 a true and exact copy of the foregoing Decision and Order was  
10 mailed, postage prepaid to the following:

11 Emilie Loring  
12 HILLEY & LORING  
13 500 Daly Avenue  
14 Missoula, Montana 59801

15 Charles Erdmann  
16 ERDMANN LAW OFFICE  
17 P.O. Box 5418  
18 Helena, Montana 59604

19 Maria Harrison  
20 County Superintendent of Schools  
21 Toole County Courthouse  
22 Shelby, Montana 59474

23 Scott Campbell  
24 Scott Campbell  
25 Paralegal Assistant  
Office of Public Instruction